388.

SUPREME COURT OF THE UNITED STATES.

No. 128.

ADAM L. MILLS, PLAINTIFF IN ERROR,

vs.

SIMEON STODDARD'S HEIRS.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE DISTRICT OF MISSOURI.

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Missouri district, ss:

SIMEON STODDARD and others } vs. ADAM L. MILLS. }

Be it remembered, that heretofore, to wit, on the twenty-eighth day of August, in the year of our Lord one thousand eight hundred and thirty-nine, Simeon Stoddard, and others, heirs of Amos Stoddard, deceased, by Mr. Lawless, their attorney, filed in the office of the clerk of the circuit court of the United States for the district of Missouri their declaration in an action of ejectment against Adam L. Mills, in the words and figures following, to wit:

In the circuit court of the United States for the district of Missouri, October term, 1839.

Declaration.

County of St. Louis, district and State of Missouri, ss:

Simeon Stoddard, a resident citizen of the State of Indiana, Curtis Stoddard, a resident citizen of the State of Ohio, Daniel Stoddard, a resident citizen of the State of Ohio, *Doniel Stoddard, a resident citizen of the State of Ohio*, Anthony Stoddard and William Stoddard, resident citizens of the State of New York, Joseph Bunnell and Lucy Bunnell his wife, resident citizens of the State of New York, Jonas Foster and Lavinia Foster, resident citizens of the State of Ohio, Lucy Hoxie, a resident citizen of the State of New York, and Daniel Morgan and Aroa Morgan, his wife, resident citizens of the State of New York, complain of Adam L. Mills, a citizen of the State of Missouri: For that heretofore, to wit, on the first day of January, one thousand eight hundred and thirty-eight, in the county of St. Louis, State and district aforesaid, the said plaintiffs were, and still are, legally entitled, as tenants in common, to the possession of all that tract of land situate, lying, and being in the county aforesaid, containing three hundred and fifty arpens, French measure, more or less, being the same tract originally granted by the Spanish government, in the province of Upper Louisiana, to Mordecai Bell, by concession bearing date 29th January, 1800, and being the same tract located and surveyed by the proper officer on or about the first day of January, 1806, and which concession and survey have been duly confirmed by the Congress of the United States to the said Mordecai Bell, or to his legal representatives, according to the said survey, and which tract is the same contained in the survey No. 3,026, made by the authority of the United States, under and by virtue of the confirmation aforesaid, and is bounded on the east by the forty arpen field lot, on the south by tract called the Mill tract, and on the north and west by lands described as public lands on the survey made as aforesaid on the 1st January, 1806; and said plaintiffs, being so legally entitled to the possession thereof, the said Adam L. Mills, with force

and arms, to wit, on the first day of January, one thousand eight hundred and thirty-eight aforesaid, entered into said premises and ejected therefrom the said plaintiffs, and took possession of same, and still holds possession thereof, to the great injury of said plaintiffs, who aver that they have sustained damage to the value of five thousand dollars, and therefore bring suit. On which declaration was the following endorsement:

This is an action of ejectment. Damages, $5,000. Let summons issue.

L. E. LAWLESS, *Att'y for pl'ffs.*

And thereupon, on the day of the filing of said declaration, a writ of summons issued from the office of the clerk of said circuit court, in tenor and form following to wit:

Summons.

MISSOURI DISTRICT, *sct:*

The President of the United States, to the marshal of the Missouri district, greeting:

You are hereby commanded to summon Adam L. Mills, who is a citizen of the State of Missouri, that he be and appear before the honorable the circuit court of the United States for the eighth circuit and district of Missouri, at the next term thereof, to be held at the city of Saint Louis, within and for said district, on the first Monday of October next, then and there to answer unto Simeon Stoddard, a citizen of the State of Indiana, Curtis Stoddard, Daniel Stoddard, citizens of the State of Ohio, Anthony Stoddard and William Stoddard, citizens of the State of New York, Joseph Bunnell and Lucy Bunnell his wife, citizens of the State of New York, Jonas Foster and Lavinia Foster, citizens of the State of Ohio, Lucy Hoxie, a citizen of the State of New York, Daniel Morgan and Aroa Morgan his wife, citizens of the State of New York, of a plea of ejectment, to the damage of the said plaintiffs of five thousand dollars. Hereof fail not, and have you then there this writ.

Witness the hon'ble Roger B. Taney, chief justice of the United States, this 28th day of August, 1839. Issued at office, in [SEAL.] the city of St. Louis, under the seal of said court, the day and year last aforesaid.

JO. GAMBLE, *Clerk.*

Which said writ was duly returned, endorsed as follows:

Marshal's return.

"Not served, for want of time.

"JAMES H. RELFE,
"*Marshal for the Missouri district.*"

And afterwards, at the October term of said court, in the year aforesaid, in the record of proceedings thereof is the following entry, to wit:

Order.

SIMEON STODDARD AND OTHERS
vs.
ADAM L. MILLS.

The writ in this case having been returned by the marshal not executed, thereupon, on motion of said plaintiffs, by their attorney, it is ordered by the court that an alias summons issue returnable to the next term of this court.

Whereupon, on the ninth day of October, in the year aforesaid, an alias summons issued, pursuant to said order, as follows:

Alias summons.

MISSOURI DISTRICT, *ss:*

The President of the United States to the marshal of the Missouri district, greeting:

You are hereby commanded, as you were heretofore commanded, to summon Adam L. Mills, a citizen of the State of Missouri, that he be and appear before the circuit court of the United States for the district of Missouri at the next term thereof, to be held at the city of St. Louis, within and for said district, on the first Monday of April next, then and there to answer unto Simeon Stoddard, a citizen of the State of Indiana, Curtis Stoddard and Daniel Stoddard, citizens of the State of Ohio, Anthony Stoddard and William Stoddard, citizens of the State of New York, Joseph Bunnell and Lucy Bunnell his wife, citizens of the State of New York, Jonas Foster and Lavinia Foster, citizens of the State of Ohio, Lucy Hoxie, a citizen of the State of New York, Daniel Morgan and Arva Morgan his wife, citizens of the State of New York, of a plea of ejectment, to the damage of the said plaintiffs of five thousand dollars. Hereof fail not, and have you then there this writ.

Witness the honorable Roger B. Taney, chief justice of the United States, the ninth day of October, A. D. 1839. Issued at office, in the city of St. Louis, under the seal of said court, the day and year last aforesaid. [L. S.]

JO. GAMBLE, *Clerk.*

And the marshal to whom the same was directed duly returned the said writ, with his return thereon, endorsed as follows:

Marshal's return.

Served on the defendant, Adam L. Mills, at St. Louis, in the district of Missouri, by reading the same in his hearing and presence, on the 11th of October, 1839.

JAMES H. RELFE,
Marshal for the district of Missouri.

And afterwards, at the April term of said circuit court, in the year one thousand eight hundred and forty, the said defendant, by Mr. Spalding, his attorney, appeared and filed his plea to the action aforesaid in the words following, to wit:

Plea.

And the said defendant, by his attorney, comes and defends the wrong and injury, when, &c., and says that he is not guilty of said trespass and ejectment in manner and form as in the said declaration is set forth; and of this he puts himself upon the country, &c.

And this cause was afterwards continued from term to term of said court until the April term thereof, in the year one thousand eight hundred and forty-six; at which term, in the record of proceedings of said court are the following entries, to wit:

TUESDAY, *7th April*, 1846.

SIMEON STODDARD AND OTHERS
vs.
ADAM L. MILLS.

The attorney for plaintiffs comes and suggests to the court here that, since the last continuance of this cause, Curtis Stoddard, one of the plaintiffs in this action, hath departed this life, which is not denied, but admitted to be true.

Trial.

Whereupon, the surviving plaintiffs, and the said defendant, by their respective attorneys, come, and thereupon also come a jury, to wit: Anderson Martin, William M. Jacobs, Luther F. Warder, Alexander A. Kirkpatrick, Frederick Branstetter, Edward A. Lewis, William B. Hudgens, Thomas P. Ruby, Thomas J. Simpson, Oachel Burgess, William Lennox, and Benjamin F. Smith, twelve good and lawful men, who were duly elected, tried, and sworn, well and truly to try the issue within joined between the parties aforesaid.

And the parties not having concluded their evidence to the jury at the hour of adjournment, further proceedings in this cause are continued until the meeting of the court to-morrow.

WEDNESDAY, *8th April*, 1846.

SIMEON STODDARD and others
vs.
ADAM L. MILLS.

The arguments of counsel not being concluded at the hour of adjournment, further proceedings in this cause are continued until the meeting of the court to-morrow.

THURSDAY, *9th April*, 1846.

SIMEON STODDARD and others
vs.
ADAM L. MILLS.

Mr. Ewing, of counsel for said plaintiffs, being unable from sickness to attend in court this day, and the arguments of counsel not being concluded, further proceedings in this cause, on motion of defendant's counsel, and with the assent of the court, are continued until the meeting of the court to-morrow.

FRIDAY, 10*th April*, 1846.

SIMEON STODDARD and others
vs.
ADAM L. MILLS.

The arguments of counsel not yet being concluded, further proceedings in this cause are continued until the meeting of the court tomorrow.

SATURDAY, 11*th April*, 1846.

SIMEON STODDARD and others
vs.
ADAM L. MILLS.

The arguments of counsel not being concluded at the hour of adjournment, further proceedings in this cause are adjourned until the meeting of the court on Monday morning.

MONDAY, 13*th April*, 1846.

SIMEON STODDARD and others
vs.
ADAM L. MILLS.

Anthony Stoddard and William Stoddard, two of the said plaintiffs, being solemnly called come not, nor do they further prosecute their said writ against the said defendant. It is, therefore, considered by the court, that the said Anthony and William take nothing by their writ, that their names be struck out of the declaration, and that the defendant go thereof without day. Whereupon come again the remaining plaintiffs and the said defendant, by their respective attorneys, and also the jury aforesaid, who, having retired from the bar to consider of their verdict, return into court here, and upon their oath, do say:

Verdict.

"We, the jury in the above entitled cause, find the defendant guilty of the trespass and ejectment alleged in the declaration in the above entitled cause, as to four-fifths, less one-sixth and one-twelfth, of the following described piece of land, parcel of the land in said declaration described, to wit: A certain tract or parcel of land, situate, lying, and being in the county of Saint Louis, and bounded as follows, beginning at the southeast corner of the location, under a New Madrid certificate issued to Eustache Peltier, or his legal representatives, where the said corner is fixed upon the line of a tract, formerly the mill tract of Auguste Chouteau, deceased; thence, with the southern line of said location, as the same runs westwardly, seven chains; thence, north fourteen degrees forty-five minutes east, to the Methodist burying ground; thence, with the south line of the Methodist and Catholic burying grounds, nine chains and sixty links, to the line of the common field lots; and thence with the line of the common field lots (having in it an angle) to the place of beginning: being forty acres of land, and is

bounded on the south by the land formerly of Auguste Chouteau, called the Mill tract; west by the land of John F. Darby; north by the Methodist and Catholic grave yards; east by the common field lots of Saint Louis. And we further find, that the damages suffered by said plaintiffs, by reason of said trespass and ejectment, to have been twelve hundred dollars. And we further find, that the monthly value of said four-fifths, less one-sixth and one-twelfth, of said described premises, is thirty-one dollars and twenty-five cents."

Judgment.

It is therefore considered by the court here, that the said Simeon Stoddard, Daniel Stoddard, Joseph Bunnell and Lucy his wife, Jonas Foster and Lavinia his wife, Lucie Hoxie, Daniel Morgan and Aroa his wife, recover against the said Adam L. Mills, their said four-fifths, less one-sixth and one-twelfth, of a tract or parcel of land, situate in the county of Saint Louis, containing forty acres, bounded on the south by land formerly of Auguste Chouteau, called the Mill tract; west by land of John F. Darby; north by the Methodist and Catholic grave yards; east by the common field lots of Saint Louis. And it is further considered, that the said plaintiffs recover against the said defendants their damages aforesaid, in form aforesaid, by the jury assessed, together with their costs and charges by them about their suit in this behalf expended, and that they have thereof execution.

Motion in arrest of judgment.

THURSDAY, 16*th April*, 1846.

SIMEON STODDARD and others
vs.
ADAM L. MILLS.

Motion in arrest of judgment filed.

Order overruling.

SATURDAY, 18*th April*, 1846.

SIMEON STODDARD and others
vs.
ADAM L. MILLS.

The motion in arrest of judgment, and all and singular the matters and things therein contained, are by the parties submitted to the court, which being seen and heard, and by the court here fully understood, and mature deliberation being hereupon had. For that it seems to the court here that said motion, and the reasons therein contained, are not sufficient in law to arrest the said judgment. Therefore, it is considered, that said motion be overruled. And the said defendant files his bill of exceptions, signed and sealed, and which is ordered to be made a part of the record. Which said bill of exceptions is in the words and figures following, to wit:

Bill of exceptions—Plaintiffs' evidence—proceedings before commissioners.

Be it remembered, that on the trial of this cause the plaintiffs gave in evidence the following document, which is in the words and figures following:

Antoine Soulard, inhabitant of the town of St. Louis, enters with the recorder of the said district to be recorded, a concession and title, and the following papers, belonging to Amos Stoddard, major of the artillery, viz: 1st. Title of concession originally granted to Mordecai Bell by the Lieutenant Governor Don Charles Dehault Delassus, dated 29th January, 1800. 2. Deed of sale made by order of the commanding officer aforesaid, in favor of James McKay, late commandant of the district of St. André. 3. Deed of conveyance from Mr. McKay in favor of said Amos Stoddard. 4. Certificate of survey of the said land in favor of Captain Amos Stoddard aforesaid; in all four papers remitted.

ST. LOUIS, 29*th June*, 1808.

ANTOINE SOULARD.

See record book D, page 361.

No. 261. Mordicai Bell, claiming 350 arpens.

To Don Charles Dehault Delassus, lieutenant governor and commander-in-chief of Upper Louisiana, &c.

Mordicai Bell, a Roman Catholic, has the honor to represent that, with the consent of your predecessor, he came over to this side (of the Mississippi) where he has selected a piece of land in his majesty's domain, on the south side of the Missouri This being considered, he supplicates you to have the goodness to grant him, at the same place, for the support of his family, the quantity of three hundred and fifty arpens of land in superficie. The petitioner having the means necessary to improve a farm, and having no other views but to *leave* as a peaceable and submissive cultivator, hopes to obtain the favor he solicits.

ST. ANDRE, *January* 21, 1800.

his
MORDECAI ⋈ BELL,
mark.

Be it forwarded to the lieutenant governor, with the information that the statement here above is true, and that the petitioner deserves the favor which he solicits.

SANTIAGO MACKAY.

ST. ANDRE, *January* 21, 1800.

ST. LOUIS OF ILLINOIS, *January* 29, 1800.

In consequence of the information of the commandant of St. Andrew, Don Santiago Mackay, I do grant to the petitioner the tract of land of three hundred and fifty arpens in superficie, which he solicits,

provided it is not prejudicial to any person; and the surveyor, Don Antonio Soulard, shall put the interested in possession of the said quantity of land he asks for, in the place indicated; and this being executed, he shall make out a plat delivering the same to the party, together with his certificate, in order to serve him to obtain the concession and title in form from the intendant general, to whom alone belongs, by royal order, the distributing and granting all classes of land belonging to the royal domain.

CARLOS DEHAULT DELASSUS.

Recorded, No. 12. MACKAY.

St. Louis, *April 15th*, 1835.

I certify the above and foregoing to be truly translated from the original. JULIUS DE MUN, T. B. C.

Amos Stoddard, esq., *St. Louis.* No. 42.

[For plat see original.]

Note.—This land was purchased of James Mackay, who acquired the same of Mordecai Bell, who obtained it of the Spanish Government.

I do certify, that the above plot represents three hundred and fifty arpens of land, French measure, situated in the district of St. Louis, Territory of Louisiana, and surveyed by me at the request of the proprietor, Amos Stoddard, esq., who claims the same in virtue of a grant obtained by Mordecai Bell from the Spanish Government.

Given under my hand, at St. Louis, the twenty-first day of January, year eighteen hundred six.

JAMES MACKAY.

In virtue of the above plot and certificate of survey, performed by the deputy surveyor, James Mackay, in behalf of Amos Stoddard, esq., said tract containing 350 arpens, French measure, or 299 acres 43 poles English measure. I have recorded the whole at the folio 44, of the book D, No. 42. St. Louis, the 27th January, 1806.

ANTOINE SOULARD,
Surveyor General Territory Louisiana.

See book D, page 362.

No. 2. St. André, Haut Louisiana, l'an mill huit cent et quatre le vingt neufieme jour de mois de May. Par devant nous Richard Caulk, syndic du district de St. André, fut present Mordecai Bell, habitant de St. André du Missouri, que reconnais et declare par ce present d'avoir vendue volontairement change cede delaisse et abandonnez de main-

tenant ét pour toujours, pour lui même et ses successeurs et heretiers et ayant cause a Jaque Mackay, commandt. de St. Charles et St. André, et a ses successeurs et heretier et ayant cause, tout droit titre pretention proprieté et concession d'une terre de trois cent cinquante arpens en superficie concedé au dit Mordecai Bell, par Dn. Chs. Dehault Delassus et situe. Pour le prix et consideration d'une morceaux de terre de cent cinquante arpens en superficie, situe sur la riviere cheveaux Maron Ruisseau a McLaughlin, laquell morceaux de terre de cents cinquante arpens le dit Mordecai Bell reconnois et declare par ce present d'avoir deja reçu du dit Jacque McKay, pour tout prix et consideration qui le dit Mordecai Bell ou ses successeurs ou ayant cause puis jamais demander du dit Jacque McKay, ou de ses successeurs ou heretier ou ayant cause pour le dit terre de trois cent cinquante arpens en superficie. En consequence de qui le dit vendeur Mordecai Bell, pour lui même et ses successeurs heritier et ayant cause vende change cede delaisse abandomme et renonce de ce moment et pour toujour tout ses droits, pretention titre et proprieté et concession qu'il ai ou qu'il peut avoir a l'avenir au ou pour la dit terre de trois cent cinquante arpens en superficie avec tout les avantages et traveaux appartenant a la dit terre, au et en faveur du dit Jaque McKay, et a ses successeurs et heritier et ayant cause, aux quells le dit vendeur, (Mordecai Bell,) donne possession de ce jour et pour toujours de la dit terre de trois cents cinquante arpens in superficie, avec ses traveaux et avantage deja dit et de plus le dit vendeur pour lui même et ses successeurs et heretiers et ayant cause, s'oblige par ce present de donner ou faire donnez au dit acquereur et a ses successeurs un titre solide et legitime pour la dit terre de trois cents cinquante arpens; aussitot que lui le dit vendeur, ou tout autre pour lui, puis obtenir de parrail titre du guvernement de ce province, bien entendu que le dit Mordecai Bell garrantee la dit terre de trois cent cinquante arpens au dit Jaque Mackay, contre tout reclamation de lui le sien et de tout autre individue quelconque, mais non point contre le gouvernement. Et foi de quoi les partie contractan ont accepté et signé le present, et le dit Mordecai Bell, ne sachant poin signé a fait sa marque ordinaire en presence de temoins soussigné et nous le dit syndic.

MORDECAI BELL, sa ⋈ marque,
JAQUE MACKAY,
THOMAS HENRY,
ISAIAH JONES,
RICHARD CAULK

Copie expedié et remis au greff.

No. 3. Know all men by these presents, that I, James Mackay, of St. Andrew du Missoury, for and in consideration of value received by me from Captain Amos Stoddard, of St. Louis, the receipt whereof I do hereby acknowledge, have granted, bargained, and sold, and do by these presents grant, bargain, and sell, unto him, the said Amos Stoddard, his heirs and assigns, forever, all my right and title in *a* to a certain grant of land, of three hundred and fifty acres or arpens, granted by

the Spanish Government to Mordecai Bell, inhabitant of St. Andrew, the 19th January, 1800, and sold by the said Mordecai to me, by a deed recorded in the office of St. Louis. To have and to hold the said bargained premises, with all its appurtenances, unto him, the said Amos Stoddard, his heirs and assigns, forever; and I, the said James Mackay, for myself, my heirs, executors, and administrators, do covenant to warrant and defend the said granted and bargained premises unto him, the said Amos Stoddard, his heirs and assigns forever, against all the claims and demands of myself, my heirs, administrators, and assigns, lawfully claiming the same.

In testimony whereof I have hereunto set my hand and seal, at St. Louis, this twenty-sixth day of September, year of our Lord eighteen hundred and five.

JAMES MACKAY. [L. S.]

Signed, sealed, and delivered, in the presence of—
ANTH'Y NEUR,
THOMAS PENDEL.

LOUISIANA TERRITORY, *district of St. Louis:*

Before me, Auguste Chouteau, one of the justices of the court of St. Louis, personally appeared the within named James McKay, and acknowledged this foregoing deed of conveyance to be his own free and voluntary act and deed, hand and seal, and desires that the same be recorded agreeable to law.

Given under my hand and seal, at St. Louis, in the district of Louisiana, this twenty-sixth day of September, year of our Lord eighteen hundred and five.

AUGUSTE CHOUTEAU. [L. S.]

Evidence with reference to minutes and records.

October 10th, 1811.—Board met. Present, John B. C. Lucas, Clement B. Penrose, and Frederick Bates, commissioners. Amos Stoddard, assignee of James Mackay, assignee of Mordicai Bell, claiming 350 arpens of land, situate near the town of St. Louis, district of St. Louis, produces a plat of survey, dated 21st January, 1806, certified 27th January, 1806. Conveyance from Bell to Mackay, dated 29th May, 1804; from Mackay to claimant, dated 26th September, 1805. It is the opinion of the board that this claim ought not to be confirmed. See No. 5, page 359.

March 30, 1835.—F. R. Conway, esq., appeared pursuant to adjournment. Mordecai Bell, by the legal representatives of Amos Stoddard, claiming 350 arpens of land, situate in the Grand prairie, near St. Louis. See Record book A, page 93, book D, page 361, and minute book No. 5, page 359, produces a paper purporting to be an original concession from Carlos Dehault Delassus, dated January 29th, 1800. Also deed of conveyance from Mordecai Bell to James Mackay, and deed from said Mackay to Amos Stoddard.

M. P. Le Duc, being duly sworn, says: That the signature to the

concession is in the proper handwriting of Charles Dehault Delassus. Witness further says that, in the year 1804, he went, in company with Major Stoddard and several other gentlemen, to the place now claimed, and from that time the said place has always been called Stoddard's mound. See book No. 7, page 110.

June 8th, 1835, the board met pursuant to adjournment. Present, F. R. Conway, J. H. Relf, commissioners.

Mordicai Bell claiming 350 arpens of land. See book No. 7, page 110. The board are of opinion that 350 arpens of land ought to be confirmed to the said Mordicai Bell, or to his legal representatives, according to the survey on record, in book D, page 362. See book No. 7, page 170.

JAMES H. RELFE,
F. R. CONWAY.

I have examined the transcript of the above claim, and concur in the decision.

F. H. MARTIN.

Office of the United States Recorder of Land Titles,
St. Louis, Missouri, 27th March, 1840.

I do certify, that the foregoing is a full and complete transcript of the documents, papers, and proceedings had, relating to the claim of Mordicai Bell, therein mentioned, on file and of record in this office, (excepting the petition and concession, which are not given in the French and Spanish languages, but as translated into English by the translator to the late board of commissioners.) That said claim was included in the transcript of favorable decisions transmitted by the recorder of land titles, in the State of Missouri, and the two commissioners associated with him, to the Commissioner of the General Land Office, under act of Congress entitled "An act for the final adjustment of private land claims in Missouri," approved the 9th of July, 1832, and an act supplemental thereto, approved the 2d March, 1833. The said claim being in said transcript No. 261.

F. R. CONWAY,
U. S. Recorder of Land Titles in the State of Missouri.

The plaintiffs then gave in evidence the original concession of survey, with the original petition therefor, and the recommendation by James Mackay of said application to the favorable notice of the Lieutenant Governor, all of which are on the same sheet of paper, which are in the words and figures following:

Concession.

A Dn. Chs. Dehaut Delassuse, lieut. gov'r et commandant-en-chef de la Haut Louisiana, &c.

Mordecai Bell C. R. a l'honeur de vous representer que avec l'agrement de votre predecesseur il se transporter sur cette rive ou il a choiser une morceaux de terre dans la domain de sa M. R. S. du Missouri, ce

que considere, il vous supplie d'avoir la bonte de lui accorder au meme lieu, pour le soutien de sa famille la quantite de trois cents cinquante arpens de terre en superficie, le supliant ayant le moyene necessaire pour exploite une ferme et n'ayant d'autre vue que de vivre en cultivateur soumis et paisable, espere obtenir la grace qu'il solicit.

MORDECAI his ✕ mark BELL.

St. André, 21st Janvier, 1800.

Soi passe a Mr. le Lieut. Gouv'r en l'informant que l'exposé a contre est veritable, et que le suppliant merit la grace qu'il solicit.

SANTIAGO MACKAY.

St Andre, le 21 Jan'r, 1800.

Sn. Louis de Illinois, a 29 *de Enero, de* 1800.

En virtad del informe del comd'te particular de Sn. Andres, Dn. Santiago McKay, concede al suplicante la tierra de tres cientos y cinquenta arps. planos que solicita, si no perjudica à nadie y el Ag'or Dn. Anto. Soulard, poudra el interesado en posesion de la referidad cantidad de tierra que jside, cuel l'itio indicado, loql. evacuade, formara plano entregando à la parte este y certificacion para que le sirva a obtener la concession y titulo en forma del Sr. Intenda'te G'al, a quien corespond privativamente el repartir y conceder toda clase de tierras realengas.

CARLOS DEHAULT DELASSUS.

Rec'd No. 12. MACKAY.

The plaintiffs also gave in evidence the act of Congress, approved July 4th, 1836, entitled "An act confirming claims to land in the State of Missouri, and for other purposes;" and also the following instruments, to wit: The deed of Mordecai Bell to James Mackay; the deed of said Mackay to Amos Stoddard; the deed of said Mackay to Bell; the survey of a tract of 350 arpents and plat by James Mackay, dated in 1806, and the plat and survey of the confirmation of said claim. Which documents are in the words and figures following:

Deed of Bell to Mackay.

St. André, Haut Louisiana, l'an mil huit cent et quatre, le vingt neufieme jour de mois de May, pardevent nous Richard Caulk, syndic du district de St. Andre, fut presant Mordecai Bell, habitant de St. André du Missouri, que reconnois et declare par ce present d'avoir vendue volontairement change cede delasser et abandonnez de maintenant et pour toujour pour lui meme et ses successeurs et heritier et ayant cause, a Jaque Mackay, command't de St. Charles et St. Andre, et a ses successeurs et heritier et ayant cause, tout droit tittre pretention propriete et concession d'une terre de trois cent cinquante arpens en superficie conceder au dit Mordecai Bell par Dn. Chs. Dehault Delassus et situe, pour le prix et consideration d'une morceau de terre de cent cinquante arpens en superficie situe sur la riviere cheveaux Maron Ruisseaux a McLaughlin lequell morceaux de terre de cents cinquante

arpens le dit Mordicai Bell reconnois et declare par ce present d'avoir deja reçu du dit Jaque Mackay. Pour tout prix et consideration que le dit Mordicai Bell ou ses successeurs au ayant cause puis jámais demander du dit Jaque Mackay ou de ses successeurs ou herritiers ou ayant cause pour la dit terre de trois cent cinquante arpens en superficie. En consequence de quoi le dit vendeur Mordecai Bell pour lui meme et ses successeurs herritier et ayant cause vende change cede delaisse abandone et renounce de ce moment et pour toujour tout ses drois pretention tittre et propriete et concession qu'il ai ou qu'il peut avoir a l'avenir au ou pour la dit terre de trois cents cinquante arpens en superficie avec tout les avantage et traveaux appartenant a la dit terre, au et en faveur du dit Jaque Mackay et a ses successeurs et herritier et ayant cause, aux quelle le dit vendeur (Mordecai Bell,) donne possession de ce jour et pour toujour de la dit terre de trois cents cinquante arpens en superficie avec ses traveaux et avantage deja dit. Et de plus le dit vendeur pour lui meme et ses successeurs et heritier et ayant cause s'oblige par ce present de donner ou faire donner au dit acquereur et a ses successeurs un tittre solid et legitime pour la dit terre de trois cent cinquante arpens aussitot que lui le dit vendeur ou tout autre pour lui puis obtenir de parrail tittre du gouvernement de ce province bien entendue que le dit Mordecai Bell garrantee la dit terre de trois cents cinquante arpens au dit Jacque Mackay contre tout reclamation de lui, le sien et de tout autre individue quelconque mais ne poin contre le gouvernement. Et foi de quoi les partie contractant on accepte et signe la present et le dit Mordicai Bell ne sachant poin signe a fait sa marque ordinaire en presence de temoins soussigne et nous le dit syndic.

MORDICA sa ⋈ marque BELL,
JAQUE MACKAY,
THOMAS HENRY,
ISAIAH JONES,
RICHARD CAULK.

Copie expedie et remis au Greff.

Deed of Mackay to Stoddard.

Know all men by these presents, that I, James Mackay, of St. Andrew du Missouri, for and in consideration of value received by me from Captain Amos Stoddard, of St. Louis, the receipt whereof I do hereby acknowledge, have granted, bargained, and sold, and do by these presents grant, bargain, and sell, unto him, the said Amos Stoddard, his heirs and assigns forever, all my right and title in and to a certain grant of land of three hundred and fifty acres or arpens, granted by the Spanish government to Mordecai Bell, inhabitant of St. Andrew, the 29th of January, 1800, and sold by the said Mordecai, to me, by a deed recorded in the office of St. Louis: to have and to hold the said bargained premises, with all its appurtenances, unto him, the said Amos Stoddard, his heirs and assigns forever. And I, the said James Mackay, for myself, my heirs, executors, and administrators, do covenant to warrant and defend the said granted and bargained premises,

unto him, the said Amos Stoddard, his heirs and assigns forever, against all the claims and demands of myself, my heirs, administrators and assigns lawfully claiming the same.

In testimony whereof I have hereunto set my hand and seal, at St. Louis, this *this* twenty-sixth day of September, year of our Lord eighteen hundred and five.

JAMES MACKAY. [L. S.]

Signed, sealed, and delivered in the presence of—
ANTH'Y NEUR,
THOMAS PENDEL.

LOUISIANA TERRITORY, *district of St. Louis, ss:*

Before me, August Chouteau, one of the justices of the court of St. Louis, personally appeared the within named James Mackay, and acknowledged the foregoing deed of conveyance to be his own free and voluntary act and deed, hand and seal, and desires that the same be recorded agreeable to law.

Given under my hand and seal, at St. Louis, in the district of Louisiana, this twenty-sixth day of September, year of our Lord eighteen hundred and five.

AUG'TE CHOUTEAU. [L. S.]

Filed for record, Mar. 11, 1840.

JOHN RULAND, *Recorder.*

Deed of Mackay to Bell.

St. Andre, Haut Louisiane, l'an mil huit cent et quatre, le vingt neufieme jour du mois de May. Pardevan nous Richard Caulk, syndic de la district de St. Andre, fut present Jaque Mackay, commandant de St. André et St. Charles, que reconnois et confesse par ce present d'avoir change vendue volontairement et cede, delaisse et abandonne de maintenant et pour toujour pour lui meme et ses successeurs et ayant cause, a Mordecai Bell, habitant de dit St. André, et a ses successeurs et ayant cause tout droit, tittre et propriete d'une morceaux de terre de cent cinquante arpens en superficie, etant une partie de la concession du dit Jaque Mackay, et situe sur le ruisseau a McLaughlin riviere au Cheveaux maron fourche de la riviere a Bonhomme; la dit morceau de terre de cent cinquante arpens, vendue comme ci dessus, pour le prix et consideration de cinquante piastres argen courrant, et une terre de trois cent cinquante arpens en superficie, concede au dit Mordecai Bell par Don Charles Dehault Delassus, laquelle teire et argen le dit Jaque Mackay reconnois et declare par ce present d'avoir regu deja du dit Mordecai Bell, pour tous prix et consideration que le dit Jaque Mackay, ou ses successeurs, et ayant cause, puis jamais demander du dit Mordecai Bell ou de ses successeur ou ayant cause, pour le dit morceau de cent cinquante arpens. En consequence de quoi le dit vendeur, J. Mackay, pour lui meme et ses successeurs, et ayant cause, cede, change, vende, delaisse, abandonne, et renonce de ce moment et pour toujour, tout ses droit, tittre, propriete, et pretention qu'il ai ou qu'il peut avoir a l'avenir au ou pour la dit morceaux de terre de cent

N.128. Miller & Stoddard - p. 17.

Vacant

The Inhabitants of St. Louis

Augte Chouteau.

cinquante arpens en superficie, avec tout les avantage appartenant au dit morceaux de terre, au et en faveur du dit acquereur M. Bell, et a ses successeurs et ayant cause au quelle le dit vendeur donne possession de ce jour et pour toujour, de la dit morceaux de terre de cent cinquante arpens en superficie, et de plus le dit vendeur pour lui meme et ses successeurs, s'oblige pour ce present de donner en faire donner au dit acquereur un tittre solid et legetime pour la dit morceaux de terre de cent cinquante arpens, aussitot que lui le dit vendeur puis obtenir des parrail tittre du gouvernment de ce province ; bien attendue que le dit Jaque Mackay ne garrantie pour le dit morceaux de terre de cent cinquante arpens, excepter de tout reclamation d'individue quelconque et de lui meme et ses successeurs, mais non du gouvernment.

En foi de quoi les partie contractant en accepte et signer la present excepter le dit Mordecai Bell, ne sachant poin signe ai fait sa marque ordinaire, en presence des temoins soussigne, et nous le dit syndic.

JAQUE MACKAY,
MORDICAI BELL,
THOMAS HENRY,
ISAIAH JONES, et
RICHARD CAULK.

Nous, James Mackay, commandant de St. Andre et St. Charles, certifie que la present est une copie conformé à l'original que reste entre les mains du proprieteur et la present copie à etes depose aux archive de ce poste à St. Andre le 8 Jn., 1804.

JAMES MACKAY.

Filed April 4, 1845.

S. D. BARLOW, *Recorder*.

Plat and survey.

TERRITORY OF LOUISIANA, Dist. of St. Louis.—No. 42.

AMOS STODDARD, esq.

[*For plat, see original.*]

Nota.—This land was purchased of James Mackay, who acquired the same of Mordecai Bell, who obtained it of the Spanish Government.

I do certify, that the above plot represents three hundred and fifty arpens of land, French measure, situated in the district of St. Louis, Territory of Louisiana, and surveyed by me at the request of the proprietor, Amos Stoddard, esq., who claims the same by virtue of a grant obtained by Mordecai Bell from the Spanish Government.

Given under my hand at St. Louis, the twenty-first day of January, year eighteen hundred and six.

JAMES MACKAY.

In virtue of the above plot and certificate of survey, performed by the deputy surveyor, James Mackay, in behalf of Amos Stoddard, esq., said tract containing 350 arpens, French measure, or 299 acres 43 poles, English measure, I have recorded the whole at the fo. 44 of the book D, No. 42.

ANTOINE SOULARD,
Surveyor Gen'l Ter'y Lou'a.

St. Louis, *27th January*, 1806.

Surveyor's Office,
St. Louis, *8th of April*, 1842.

The above plat and the certificate and note thereto of the survey of 350 French arpents, in the name of Amos Stoddard, are correctly copied from page 44 of the book of "*Surveys by Soulard & Bent*," in this office.

JOS. C. BROWN,
Acting surveyor of the public land for the district of Illinois and Missouri.

Survey No. 2499.—Martin Coontz.

[*For plat, see original.*]

Plat and description of survey.

Surveyor's Office,
St. Louis, *26th May*, 1837.

Survey No. 3026, in T. 45 N., R. 7 E.

Plat and description of a survey of two hundred and ninety-seven acres and seventy-four hundredths of an acre of land, equal to three hundred and fifty arpens, executed by Laurentius M. Eiler, deputy surveyor, from the 21st day of October to the 8th day of December, 1836, (under instructions of the 16th day of October of the same year,) for Mordecai Bell, or his legal representatives, in conformity with the decision No. 261 of the late board of commissioners, under the acts of Congress approved on the 9th day of July, 1832, and 2d of March, 1833, and in virtue of the confirmation thereof by the acts of Congress, approved the 4th of July, 1836, entitled "An act confirming claims to land in the State of Missouri, and for other purposes," it being the same land surveyed by James Mackay, on the 21st day of January, 1806, for Amos Stoddard, claiming in virtue of a grant to Mordecai Bell from the Spanish Government, as will be seen by the plat thereof recorded by Antoine Soulard, surveyor general of the Territory of Louisiana, on the 27th day of January, 1806.

Survey No. 2499.—Martin Coontz.

[*For plat, see original.*]

Beginning at a cedar post outside of a field on the present St. Charles road, corner of surveys No. 1278 and 1508, on the west boundary of the common fields of St. Louis, and corner of Eustache Peltier's survey No. 2472, under certificate 103; thence, south 25° 49′ west, with the westerly boundary lines of the common fields 30 links, enter a field; 2 chains and 92 links to a stone, corner of surveys No. 1278 and 1473; 5 chains and 91 links leave the field, bears nearly east; 6 chains and 52 links to a stone, northwest corner of survey No. 667 on the old St. Charles road or King's highway; 7 chains and 69 links to the south side of a road, bears east and west to a brick house; 9 chains and 51 links to a stone, corner of surveys No. 677 and 943; 12 chains and 49 links to a stone, corner of surveys No. 942 and 941; 18 chains and 46 links to a stone, corner of surveys No. 941 and 946; 21 chains and 46 links to a stone, corner of surveys No. 946 and 826; 24 chains and 42 links to a stone, corner of surveys No. 826 and 940; 27 chains and 37 links to a stone, corner of surveys No. 940 and 1265; 29 chains and 91 links to a stone, set by Eiler in the north edge of a pond, and the south edge of the road leading westward from the court-house, which stone (being a witness to the southeast corner of the survey) is a lime stone, 18 inches long, 10 inches wide, and 5 inches thick, set 10 inches in the ground, the edges facing north 25¾ east, and south 25¾ west, from which a hickory, 4 inches diameter, bears north 56° east 9 links, and a stone bears north 11 east 98 links across the road; 30 chains and 29 links to the place of the southeast corner of this survey, and is also the southeast corner of survey No. 2472, which is in the pond, and on the north boundary of A. Chouteau's survey No. 363; thence, north 75° 32′ west, along the north boundary of A. Chouteau's tract, a field close to the right; 13 chains and 6 links to a stone; 22 chains and 43 links, another field close to the right; 28 chains and 5 links to a stone, the southwest corner of survey No. 2472, and the southeast corner of survey No. 903, here pass the field; 32 chains and 95 links, equal to 11 arpens and 3 poles, to a stone, set by Eiler on a line between surveys No. 903 and 363 for the southwesterly corner of this survey; said stone being a lime stone 13 inches long, 11 inches wide, and 5 inches thick, set 7 inches in the ground, the edges facing north and south, from which a black oak, 7 inches diameter, bears north 55° east 20 links, and a black oak, 10 inches diameter, marked of old with a large blaze below, bears north 22° west 21 links; thence, north 0° 45 west, 1 chain and 60 links, to a branch 4 links wide, runs southwest; 5 chains

and 50 links, to a post oak 5 inches diameter; 8 chains and 50 links, to an old road, bears east and west; 13 chains and 62 links intersect the most eastern division of the northerly boundary line of widow Camps' 200 arpens tract, survey No. 903, and the most southern line of survey No. 2,499, in the name of Martin Coontz; 10 chains and 77 links south 75° east, to a corner stone of said surveys of Camp and Coontz; at said intersection is a stake set by Eiler, from which a white oak, 5 inches diameter, bears north 2° west 18 links, and a hickory, 4 inches diameter, bears north 38° east 19 links; 13 chains and 65 links to a road, bears east and west; 14 chains 46 links to a black jack 4 inches diameter; 14 chains and 95 links to a branch 10 links wide, runs west; 17 chains and 50 links to a road, bears northwest and southeast; 32 chains to a road, bears northeast and southwest; 38 chains and 92 links intersected the south boundary line of J. Smith's 160 acre tract, survey No. 2,491, and which is also a boundary of survey No. 2,499; 5 chains and 77 links east of Smith's southwest corner, at said intersection set a stake, from which a white oak, 5 inches diameter, bears north 17° east 33 links; 57 chains and 60 links to the St. Charles road, bears southeast and northwest; 60 chains and 10 links, to a fork of the St. Charles road, near a pond; 65 chains and 63 links, to a black jack 4 inches diameter, northwesterly corner of this survey, from which a hickory, 3 inches diameter, bears south 57° east 16 links, and a hickory, 4 inches diameter, bears north 17 east 7 links; thence, N. 89° 15′ E. 7 chains and 75 links, to a hickory 3 inches diameter; 12 chains 80 links to a branch 3 links wide, runs north; 34 chains and 76 links intersect the east boundary line of J. Smith's 160 acre tract, survey No. 2,491, and which is also a line of survey No. 2,499; 12 chains and 82 links south of Smith's S. E. corner; at said intersection is a stake set by Eiler, from which a black jack, 4 inches diameter, bears S. 52° E. 46 links, and a black jack, 3 inches diameter, bears N. 60° W. 25 links; 45 chains and 54 links, to the northeasterly corner of this survey, on the west boundary line of a school lot, survey No. 3,003, in the St. Louis common fields, and east boundary of survey No. 2,499, from which stake a white oak, 4 inches diameter, bears S. 75° W. 4 links, and a white oak, 4 inches diameter, bears N. 51° W. 4 links; thence, S. 0° 45′ E., with the westerly boundary line of St. Louis common fields; 5 chains and 34 links, to a stone, N. W. corner of survey No. 1,478; 8 chains and 38 links, to a stone, corner of surveys No. 1,478 and 1,438; 11 chains and 44 links, to a stone, in the line of survey No. 1,438; 14 chains and 44 links, to a stone, corner of surveys No. 1,438 and 1,476; 17 chains and 46 links, to a stone, corner of surveys No. 1,476 and 1,269, at the corner of an enclosure to the left; 20 chains and 49 links, to a stone, corner of surveys No. 1,259 and 1,252; 23 chains and 59 links, to a stone, in a fence line, corner of surveys No. 1,252 and 1,273; 26 chains and 95 links, to or near the northeast corner of the Roman Catholic grave yard; 30 chains and 70 links, to a stone; 35 chains and 18 links, to a stone; here leave the grave yard, at or near the S. E. corner, bears about E. and W. 41 chains and 59 links, to a

stone, in the middle of the present St. Charles road, corner of surveys No. 1,509 and 1,508; 47 chains and 65 links, to the point of beginning at the cedar post. This survey includes within its limits six acres and twenty-eight hundredths of an acre, of survey No. 903, in the name of widow Camps' legal representatives, under a confirmation by the old board. The survey No. 2,472, for 160 acres, which is altogether in this survey of Bell, and the surveys No. 2,491 and 2,499, which are in part included, namely, (93) ninety-three acres and five hundredths of an acre of 2,491, and thirty-eight acres and forty-one hundredths of an acre of No. 2,499, are under locations made in virtue of certificate No. 103, issued to Eustache Peltier, or his legal representatives; 159 issued to J. Smith, or his legal representatives, and 145 issued to Martin Coontz, or his legal representatives, in pursuance of the act of Congress approved on the 17th of February, 1815, and entitled "An act for the relief of the inhabitants of the late county of New Madrid, in the Missouri territory, who suffered by earthquakes."

SURVEYOR'S OFFICE, ST. LOUIS,
11*th March*, 1840.

The foregoing plat and description of survey No. 3,026, in the name of Mordecai Bell, are correctly copied from pages 134, 135, 136, and 137, of record book C, in this office.

WILLIAM MILBURN,
Surveyor of the public lands in the States of Illinois and Missouri.

The plaintiffs then offered in evidence the depositions of Eli Baldwin and Deane Lake, which appeared to have been filed in this cause on the seventh day of April, 1840, and opened at the April term, 1840, of this court; to the reading of each of which the defendant objected, for the following reasons, which had been filed, in writing, in the office of the clerk of this court, on the 31st day of March, 1846, whereof notice had been given on that day to the plaintiffs' counsel in writing. The defendant in this case excepts to the depositions of Dean Lake, Eli Baldwin, Elisha Whittlesy, and Asa Stoddard, filed in this case on the part of the plaintiffs, and files the following exceptions to each of said depositions:

Exceptions to the depositions.

1st. That each of said depositions was taken by an officer who was not competent to take the same under the laws of the United States. 2. That each of said depositions was taken without the notice to the opposite party, which, by the laws of the United States, should have been given. 3. That neither of said witnesses was cautioned and sworn, as required by law. 4. That the reason for taking said depositions does not legally appear. 5. That neither of said depositions is properly certified by the officer taking the same. 6. That the certificate of the officer to each of said depositions is insufficient in law, in its not showing that he is not interested, or of counsel in the cause, and that the deposition was reduced to writing in the manner required by law.

Before the case was called for trial, the court on argument had overruled said exceptions, on the ground that they had not been made in a reasonable time. It was admitted that the court, on the fourth day of April, in the year 1844, established the following rule, which has been ever since in force.

Rule of court.

Ordered, that all exceptions to depositions, other than exceptions to the competency or relevancy of the evidence therein contained, shall be in writing and filed, and notice thereof given a reasonable time before trial, and shall be taken up and disposed of before the jury are sworn in the cause, or the trial commenced; and no exceptions to depositions, other than to the competency or relevancy of the evidence therein contained, shall be allowed on the trial of the cause. To the overruling of which said exceptions, and to the admission in evidence of said depositions, and each of them, the defendant, by his counsel, excepted; which said depositions and the certificates, and authentication accompanying the same, are in the following words and figures, viz:

Deposition of Eli Baldwin.

MISSOURI DISTRICT, *ss.*

The President of the United States, to any justice or judge of any of the courts of the United States, or to any chancellor, justice, [L. S.] or judge of a supreme or superior court, mayor or chief magistrate of a city, or justice of a county court, or court of common pleas in the State of Ohio, greeting:

We, reposing special trust and confidence in your integrity and circumspection, do authorize and require you, that you cause to come before you such person or persons as shall be named to you by Simeon Stoddard, Curtis Stoddard, Daniel Stoddard, William Stoddard, Anthony Stoddard, Joseph Bunnell and Lucy his wife, Jonas Foster and Lavinia his wife, Lucy Hoxie, Daniel Morgan and Aroa his wife, their agent or attorney, and he, she, or they, examine upon his, her, or their corporal oath, (to be by you administered,) touching their knowledge of any thing that may relate to a certain matter of controversy now pending in our circuit court, for the eighth circuit and district of Missouri, wherein Simeon Stoddard and others are plaintiffs, and Adam L. Mills is defendant, on the part of the plaintiffs; and having reduced the said depositions so taken by you as aforesaid, to writing, you are required to send the same, together with this commission enclosed, under your seal, to our said circuit court, at the city of St. Louis, in the State of Missouri, and district aforesaid, with all convenient speed.

Witness the honorable Roger B. Taney, chief justice of the United States, the fifteenth day of October, in the year eighteen hundred and thirty-nine.

Issued at office in the city of St. Louis, under the seal of said court the day and year last aforesaid.

JO. GAMBLE,
Clerk U. S. C. C.

SIMEON STODDARD & OTHERS, vs. ADAM L. MILLS. } In vacation, 15th October, 1839.

On application of said plaintiffs by their attorney, it is ruled that a dedimus potestatum issue to any justice or judge of any of the courts of the United States, or to any chancellor, justice, or judge, of a supreme or superior court, mayor or chief magistrate of a city, or justice of a county court, or court of common pleas, in the State of Ohio, to take the depositions of witnesses, to be read in evidence on behalf of said plaintiffs on the trial of the above cause.

A true copy of the rule.

Test:

JO. GAMBLE,
Clerk U. S. C. C. Mo. dist.

Notice.

SIMEON STODDARD, Curtis Stoddard, Daniel Stoddard, Anthony Stoddard, William Stoddard, Joseph Bunnell, Lucy Bunnell, Jonas Foster, Lavina Foster, Lucy Hoxie, Daniel Morgan, Aroa Morgan, plaintiffs. ADAM L. MILLS, defendant.

Ejectment in the circuit court of the United States, district of Missouri.

Take notice, that on the eighteenth day of November, in the year of our Lord one thousand eight hundred and thirty-nine, between the hours of nine in the forenoon, and four in the afternoon of that day, at the house of Mr. Arthur Patrick, in the town of Boardman, Turnbull county, Ohio, depositions will be taken by the undersigned, to be read on the trial of the above entitled case, on behalf of the plaintiffs; and that the taking of said depositions, if not completed on that day, will be continued from day to day, at the same place, and between the same hours, until completed.

MONTGOMERY BLAIR,
Att'y for plff.

To the above named ADAM L. MILLS, defendant.

I acknowledge service of a copy of this notice.

A. L. MILLS.

St. Louis, 16th October, 1839.

STATE OF OHIO, *Trumbull county, ss:*

Boardman, November 18th, 1839.

Before me, Henry Maning, one of the associate judges of the court of common pleas, in and for the county of Trumbull, and State of Ohio, the said court being a court of record, in conformity with the annexed dedimus and notice, at the house of Arthur Patrick, in said

Boardman, between the hours of nine o'clock, forenoon, and four o'clock in the afternoon, on the eighteenth day of November, one thousand eight hundred and thirty-nine, personally came Eli Baldwin, to give his deposition in a cause, now depending, of ejectment, in the circuit court of the United States of America, in the district of Missouri, wherein Simeon Stoddard, Curtis Stoddard, Daniel Stoddard, Anthony Stoddard, William Stoddard, Joseph Bunnell, Lucy Bunnell, Jonas Foster, Lavina Foster, Lucy Hoxie, Daniel Morgan, and Aroa Morgan are plaintiffs, and Adam L. Mills, defendant; and being by me duly cautioned and sworn to tell the truth, the whole truth, and nothing but the truth, on said oath deposes and says, that Daniel Stoddard is, from my personal knowledge, the only surviving child of Eliakim Stoddard, of this county, deceased, and that Eliakim Stoddard, deceased, was one of the reported brothers of the late Major Amos Stoddard, of the United States army, now deceased; and further, that I, the said Eli Baldwin, acted as administrator on the estate of the said Amos Stoddard, so far as his personal effects in this county, or elsewhere, came into his hands; and that the heirs-at-law of the said Amos Stoddard were his brothers and sisters, as follows: Curtis Stoddard, Simeon Stoddard, Philo Stoddard, and Eliakim Stoddard. Eliakim Stoddard is now dead; his only living son, child, and heir is the above named Daniel Stoddard, his sisters were Lavina and Lucy. Lucy intermarried with Joseph Bunnell—the last I heard of them they resided some where in the county of Cayuga, State of New York. Lavina intermarried with Abraham Pierce, and died some years ago, leaving one daughter only, by the name of Lavina, who has intermarried with Jonas Foster, and who now resides in Youngstown, in said county of Trumbull, Ohio. The above named persons are all over twenty-one years of age. The above were all the brothers and sisters who were alive, or whose children were living, at the decease of the aforesaid Amos Stoddard. I have heard that one of his brothers, named Anthony, died young, without issue; also a sister named Phœbe, who also died young without issue. And further the deponent saith not.

ELI BALDWIN.

THE STATE OF OHIO, *Trumbull county, ss:*

The above and foregoing deposition was written by the said Eli Baldwin, and was taken at the time and place, and within the hours mentioned in the forepart thereof, and according to the notice annexed to the dedimus to which this deposition is attached; the deponent was sworn by me, and subscribed the deposition in my presence, and on his oath aforesaid saith that the contents thereof, and the statements therein made, are true. The defendant was not present either by himself or counsel.

HENRY MANNING, *Associate judge.*

Deposition of Dean Lake.

In the United States circuit court for the district of Missouri.

SIMEON STODDARD, Curtis Stoddard, Daniel Stoddard, Anthony Stoddard, William Stoddard, Joseph Bunnell, Lucy Bunnell, Jonas Foster, Lavina Foster, Lucy Hoxie, Daniel Morgan, Aroa Morgan
vs.
ADAM L. MILLS.

To Adam L. Mills, the said defendant:

You are hereby notified that depositions of witnesses, and amongst them that of Dean Lake, to be read in evidence in the above cause, on the part of the said plaintiffs, will be taken at the office of the undersigned, justice of the county court of the county of St. Louis, in the city of St. Louis, in the county of St. Louis and State of Missouri, on Saturday the ninth day of November instant, between the hours of 8 o'clock in the forenoon and 6 o'clock in the afternoon; and that the taking of said depositions, if not completed on that day, will be continued from day to day at the same place, and between the same hours, till completed.

M. P. LEDUC,
Justice county court, St. Louis county.

Executed this notice in the county of Saint Louis, by delivering a true copy thereof to a free white person of the family of Adam L. Mills, over the age of fifteen years, at his residence, on the 5th day of November, 1839.

M. BROTHERTON, *Sheriff*.
By WM. S. McKNIGHT, *Deputy*.

In the United States circuit court for the district of Missouri.

SIMEON STODDARD, Curtis Stoddard, Daniel Stoddard, Anthony Stoddard, William Stoddard, Joseph Bunnell, Lucy Bunnell, Jonas Foster, Lavina Foster, Lucy Hoxie, Daniel Morgan, Aroa Morgan
vs.
ADAM L. MILLS.

Depositions of witnesses produced, sworn, and examined, on Saturday the ninth day of November, in the year of our Lord one thousand eight hundred and thirty-nine, between the hours of eight o'clock in the forenoon and six o'clock in the afternoon of that day, at the chamber of Mary Philip Leduc, in the city of St. Louis, and county of St. Louis, in the State of Missouri, before me, Mary Philip Leduc, one of the justices of the county court, within and for the county aforesaid, in a certain cause now depending in the United States circuit court for the district of Missouri, *for the district of Missouri*, between Simeon Stod-

dard, Curtis Stoddard, Daniel Stoddard, Anthony Stoddard, William Stoddard, Joseph Bunnell, Lucy Bunnell, Jonas Foster, Lavina Foster, Lucy Hoxie, Daniel Morgan, and Aroa Morgan, plaintiffs, and Adam L. Mills, defendant, on the part of the plaintiffs; said depositions taken pursuant to the notice hereunto annexed, as follows, to wit:

And the examination of witnesses is further continued until Monday next, the eleventh of this instant.

M. P. LEDUC,
Justice county court, St. Louis county.

And on the eleventh day of the said month of November, in the said year, the depositions of witnesses in the case aforesaid are taken as follows, to wit:

Dean Lake, of lawful age, being produced, sworn, and examined, on the part of the said plaintiffs, deposeth and sayeth: That he is the son-in-law of the plaintiffs, Joseph and Lucy Bunnell, two of the said plaintiffs; that the said Lucy Bunnell is a sister of Major Amos Stoddard, deceased; that the said Major Amos Stoddard was of the army of the United States, and formerly commandant of Upper Louisiana; that the said Joseph and Lucy Bunnell, two of the above named plaintiffs, are now resident in the Cayuga county, in the State of New York; that he, witness, is a resident of the same place; that he is not personally acquainted with Simeon Stoddard, one of the above named plaintiffs, but that by common reputation in the family, that he was brother of the said Amos Stoddard; that he, the said deponent, was formerly acquainted with Curtis Stoddard, one of the above named plaintiffs; that he is the reputed brother of the said Amos Stoddard; that said Curtis Stoddard formerly lived in Ohio, and believes, from reputation, that he now lives in Illinois. He, deponent, further states, that Daniel Stoddard, one of the said plaintiffs, is the reputed son of Eliakim Stoddard, who was brother to said Amos Stoddard, deceased; and said Daniel Stoddard now lives in the State of Ohio, and is by reputation the only child of the said Eliakim; that he is also personally acquainted with Anthony Stoddard and William Stoddard, two of the above named plaintiffs; that they live in Steuben county, State of New York; they are the sons of Philo Stoddard, deceased, who was the brother of the late Major Amos Stoddard, deceased; that he is also acquainted with Daniel W. Morgan and Aroa Morgan, of the county of Cayuga, State of New York; that said Aroa is the sister of the said Anthony and William Stoddard, and daughter of said Philo Stoddard; that he knows Lucy Hoxie, one of the said plaintiffs; that she is now married with John M. Cowan, of the State of Michigan; that she is the sister of the said Aroa, and Anthony and William Stoddard, and daughter of said Philo Stoddard; that he knows Jonas Foster and Lavina Foster, two of the above named plaintiffs; that he knew them in the State of New York, and since in the State of Ohio, where they resided; that said Lavina is the only child of a sister of the said Major Amos Stoddard, deceased; that he always understood that said Major Amos Stoddard died

without issue; that, at the death of the said Major Stoddard, he left four brothers and two sisters, namely: Curtis Stoddard, Eliakim Stoddard, Simeon Stoddard, Philo Stoddard, Lucy Stoddard, now Lucy Bunnell, and Lavina Stoddard, (as he thinks,) the mother of the said Lavina Foster. And this deponent further sayeth not.

DEAN LAKE.

Sworn and subscribed to before me, on the day, at the place, and within the hours first aforesaid.

M. P. LEDUC,
Justice county court, St. Louis county, Missouri.

I certify that I am not, and have not been, of counsel or attorney to either of the parties in the suit before mentioned, nor am I, nor have I been, interested in the event of said cause; that previous to the taking the foregoing deposition, a notification from me to Adam L. Mills, the defendant in said cause, was made out and served on said Adam L. Mills, the said defendant, which notification, and the service of the same by the sheriff of the county of St. Louis, in the State of Missouri, and of the time thereof, are hereto annexed, which said Adam L. Mills resides in the county of St. Louis, in the State aforesaid, at the distance of about seven hundred yards from the place of taking said deposition; and that the said deposition was taken for the reason that Dean Lake, the witness, resides at a distance from the city of St. Louis, the place of trial of said suit, greater than one hundred miles, to wit, in the county of Cayuga, State of New York; that said deposition was by me reduced to writing in the presence of the said witness, who, after reading the same in my presence, thereto subscribed his name after the same was so written.

M. P. LEDUC,
Justice county court, St. Louis county.

It was admitted, that at the commencement of this suit, the defendant was in possession of a portion of the tract comprehended in the survey of said Mackay, made in January, 1806, for Amos Stoddard, being forty acres, conveyed to said defendant on the 14th March, 1836, by Hamilton R. Gamble and wife, by their deed, the descriptive part of which is in the words and figures following:

Deed of Gamble to Mills.

"A certain tract or parcel of land situate, lying, and being in the said county of St. Louis, and bounded as follows: beginning at the southeast corner of the location under a New Madrid certificate, issued to Eustache Peltier, or his legal representatives, when the said corner is fixed upon the line of a tract, formerly the Mill tract of Auguste Chouteau, deceased; thence with the southern line of said location, as the same runs westwardly, seven chains; thence north fourteen degrees forty-five minutes east, to the Methodist burying ground; thence with the south line of the Methodist and Catholic burying grounds, nine chains and sixty links, to the line of the common field lots; and thence with

the line of the said common field lots (having in it one angle) to the place of beginning. The tract hereby conveyed being bounded on the south by the land formerly of Auguste Chouteau, which was called the Mill tract; on the west by the land of John F. Darby; on the north by the Methodist and Catholic grave yards, and on the east by the common field lots of St. Louis—being the same tract on which the said Gamble now resides, containing forty acres, from which is reserved twenty feet in width along the whole of the western line, which reservation is for the purpose of forming one-half of a road between the tract herein described and the land of John F. Darby. The land hereby conveyed being the same which the said Gamble acquired from George Collier, by two deeds recorded in the recorder's office of St. Louis county, in book R, page 528 and following; and book V, page 188 and following."

Testimony of J. F. Darby.

The plaintiffs then called John F. Darby as a witness, who testified, that he was acquainted with the ground occupied by Dr. Beaumont, just west of St. Louis, being the land conveyed by H. R. Gamble and wife to the defendant Mills, and that in his opinion the fair annual rent of those 40 acres and improvements would be five hundred dollars; that he had known the Peltier tract of land since the year 1820; that one Stokes improved and built thereon, just before 1820, on a part of the tract just west of the 40 acres conveyed by Gamble to Mills; that he, witness, afterwards owned the Stokes' place; that the improvements put by Gamble on his 40 acres, consisting of a brick dwelling-house and other erections, cost about five thousand dollars; that the annual value of said 40 acres, from 1832, without the improvements, from year to year, would have been about 100 dollars, and that if it could have been leased for a series of years, say 10, it would have been worth 200 dollars a year; that he, witness, previously owned 150 acres of said Peltier tract, and he never heard of any conflicting claim, or any dispute respecting the title under that location, until the year 1836.

Testimony of Robt. Moore.

Robert Moore, a witness for plaintiffs, testified that, in his opinion, the annual value of the place now occupied by Dr. Beaumont, formerly by H. R. Gamble, just west of St. Louis, and improved by said Gamble, from the year 1832 down to the present time, would be from 250 to 300 dollars on an average; that Gamble took possession there in 1832, and the place was then unimproved and grown up in bushes and saplings; that Gamble cleared and grubbed it, and built upon it, and resided there with his family; that the fenced and improved part would have rented from seven to ten dollars an acre; that a portion of the ground was broken; that witness grubbed a portion of it, less than an acre, and ploughed it, thus putting it in a condition for cultivation, for between 17 and 20 dollars; that such was the natural condition of the whole Peltier tract when Stokes first took possession of it; that Stokes

commenced his possession and improvement there in 1819 or 1820; that the expense of grubbing the land would be from 10 to 20 dollars an acre, and the wood from it would be of little value.

Testimony of W. Milburn.

William Milburn, a witness for plaintiffs, testified that he has known the 350 arpent tract, surveyed for Mordecai Bell, since 1817, and has known the mound there as Stoddard's mound, so called with reference to Amos Stoddard; that that mound is in the northwestern part of the tract, and that Gamble's 40 acres were within the survey by Mackay of the Mordecai Bell claim. The plaintiffs here closed their case.

Defendants' evidence.

The defendants then gave in evidence the following documents, viz.

Patent.

The United States of America, to all to whom these presents shall come, greeting:

Know ye, that there has been deposited in the General Land Office a certificate, numbered three hundred and seventy-six, of the recorder of land titles at St. Louis, Missouri, whereby it appears that under the provisions of the act of Congress, approved on the seventeenth day of February, one thousand eight hundred and fifteen, entitled "An act for the relief of the inhabitants of the late county of New Madrid, in Missouri Territory, who suffered by earthquakes," and of the several acts of Congress amendatory and explanatory of the same, Eustache Peltier, or his legal representatives, has or have located a tract of land, containing one hundred and sixty acres, and bounded and described as follows, to wit: Beginning at a corner stone of A. Chouteau's, at the western end of the St. Louis fields; thence, with A. Chouteau's line, north seventy-five degrees west, at thirteen chains and eight links a stone, twenty-eight chains to a post, thirty links west of another stone in Chouteau's line, Camp's southeast corner; thence, north thirteen chains and sixty-one links with Camp's line to Camp's corner, forty chains to a post, from which a b. jack bush, two inches in diameter, bears south thirty-seven degrees east, distant fifty links, and the centre of a mound in Smith's survey bears north forty-one degrees east; thence, east forty-four chains and forty links, to a post in the west boundary of the common fields, from which a b. jack bush, two inches in diameter, bears south forty-seven degrees west, distant thirteen links; thence, south one degree thirty minutes east, nineteen chains and seventy-five links to a stone; thence, south twenty-five degrees thirty minutes west, thirty chains and fifty-five links to the beginning, being in township forty-five north, of range seven east, and being survey number two thousand four hundred and seventy-two. There is therefore granted by the United States unto the said Eustache Peltier, or his legal representatives, and to his or their heirs, the tract of land above described. To have and to hold the said tract, with the appurtenances, unto the said

Eustache Peltier, or his legal representatives, and to his or their heirs and assigns forever.

In testimony whereof, I, Andrew Jackson, President of the United States, have caused these letters to be made patent, and the [L. S.] seal of the General Land Office to be hereunto affixed.

Given under my hand at the city of Washington, the sixteenth day of July, in the year of our Lord one thousand eight hundred and thirty-two, and of the independence of the United States the fifty-seventh.

ANDREW JACKSON.

By the President:

ELIJAH HAYWARD,
Commissioner of the General Land Office.

Recorded vol. 7, pages 284 and 285.

New Madrid certificate.

No. 103. *Office of the Recorder of Land Titles,*
St. Louis, November 28th, 1815.

I certify that a lot of one arpen, in the village of Little Prairie, in the county of New Madrid, which appears from the books of this office to be owned by Eustache Peltier, has been materially injured by earthquakes; and that, in conformity to the provisions of the act of Congress of 17th February, 1815, the said Eustache Peltier, or his legal representatives, is entitled to locate any quantity of land, not exceeding one hundred and sixty acres, on any of the public lands of the Territory of Missouri, the sale of which is authorized by law.

FREDERICK BATES.

Surveyor's Office, St. Louis,
7th of April, 1842.

The above is a correct copy of the original certificate (now on file in this office) numbered 103, of Frederick Bates, recorder of land titles for the Territory of Missouri, issued in conformity with the provisions of the act of Congress therein mentioned, of the 17th of February, 1815, entitled "An act for the relief of the inhabitants of the late county of New Madrid, in the Missouri Territory, who suffered by earthquakes."

JOS. C. BROWN,
Acting Surveyor of the public lands for the district of Illinois and Missouri.

Notice of location.

No. 103. Eustache Peltier enters one hundred and sixty acres of land, by virtue of a certificate, No. 103, issued from the office of the recorder of land titles at St. Louis, November 28th, 1815, in the name of said Eustache Peltier, or his legal representatives, for any quantity of land not exceeding one hundred and sixty acres, lying and being in the county of St. Louis and Territory of Missouri, bounded as follows,

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Survey No 2472 Certificate No 103.
T. 45 N. R. 7 E.

Scale of 40 Chains to an inch.

viz: Beginning at the southwest corner of a tract of land belonging to John B. C. Lucas, esq., on a part of which he now lives, where said southwest corner intersects or adjoins the north boundary line of a tract of land of 1400 arpents, with a mill, &c., thereon, which belongs to Auguste Chouteau, and is situated on or near the west side of said town of St. Louis; thence, north'y, bounding with said Lucas' lands and the lands of others; thence west'ly; thence south'ly; thence east'ly, by and with said Chouteau's tract of land, to the first mentioned boundary, so as to include said quantity of one hundred and sixty acres without interfering with prior legal claims.

WM. KINCHELOE.

October 24th, 1816.

To Genl. William Rector, surveyor of the lands of the United States in the territories of Illinois and Missouri—Class No. 14.

SURVEYOR'S OFFICE, *Saint Louis, 7th April*, 1842.

The above is a correct copy of the original notice of location on file in this office, made in virtue of certificate No. 103, of Frederick Bates, recorder of land titles for the territory of Missouri, issued on the 28th of November, 1815, in conformity with the provisions of the act of Congress of the 17th of February, 1815, entitled "an act for the relief of the inhabitants of the late county of New Madrid, in the Missouri territory, who suffered by earthquakes."

JOS. C. BROWN,
Acting Surveyor of the public lands for the district of Illinois and Missouri.

Survey.

Survey No. 2472, certificate No. 103. T. 45 N., R. 7 E.

[For plat, see original]

A.

Surveyed for Eustache Peltier, or his legal representatives, 160 acres, located by virtue of a New Madrid certificate. Beginning at a corner stone of A. Chouteau's at the western end of the Saint Louis fields; thence with A. Chouteau's line N. 75 W., 13 chs. 8 lks. a stone, 28 chs. a post set 30 lks. west of another stone in Chouteau's line, Camp's S. E. corner; thence north 13 chs. 61 lks. with Camp's line, Camp's corner 40 chs. set post a B. jack bush, 2 in. dia., bears S. 37 E. 50 lks., and the centre of a mound in Smith's survey bears N. 41 E.; thence east 44 chs. 40 lks. set post in the west boundary of the common fields; 7 chs. 18 lks. south of Wm. C. Carr's N. W. corner a B.

jack bush 2 in. dia. bears N. 47 W. 13 lks.; thence S. 1½ E. 19 chs. 75 lks. a stone; thence S. 25½ W. 30.55 chs. to the beginning.

March, 1818. JOS. C. BROWN, *D. S.*

SURVEYOR'S OFFICE, *Saint Louis, 7th of April*, 1842.

The above plat, and the notes of survey, No. 2472, are correctly copied from pages 83 and 84 of record book A, of this office; said survey was executed in 1818 according to the calls of the location made on the 24th of October, 1816, by "Wm. Kincheloe" for Eustache Peltier, or his legal representatives, in virtue of certificate No. 103, of Frederick Bates, recorder of land titles in the Missouri territory, issued on the 28th of November, 1815, in conformity with the provisions of the act of Congress of the 17th of February, 1815, entitled "an act for the relief of the inhabitants of the late county of New Madrid, in the Missouri territory, who suffered by earthquakes."

JOS. C. BROWN,

Acting Surveyor of the public lands for the district of Illinois and Missouri.

Extract from list of Patent certificates.

A list of patent certificates prepared for issue by the recorder of land titles, under the act of Congress of 17th February, 1815, (and the supplementary acts) for the relief of those inhabitants of the late county of New Madrid, who suffered by earthquakes.

Date.	No. P. C.	No. L. C.	Original claimants.	Quantity in acres.	To whom delivered.
1827. May 31.	376	103	Eustache Peltier or his leg'l reps.	160	A. McCalaster.

RECORDER'S OFFICE, *St. Louis, Missouri, 7th April*, 1842.

I certify the above to be truly transcribed from the register in this office of patent certificates, issued by the recorder of land titles, under the act of Congress of the 17th February, 1815, entitled "an act for the relief of the inhabitants of the late county of New Madrid, in the Missouri territory, who suffered by earthquakes," and the acts supplementary thereto, on file in this office.

F. R. CONWAY,

U. S. Recorder of land titles in the State of Missouri.

Translation of the original petition of Mordecai Bell, and of Mackay's recommendation.

Translation of original petition.

To Don Charles Dehault Delassus, lieutenant governor and commander-in-chief of Upper Louisiana, &c.:

Mordecai Bell, a Roman Catholic, has the honor to represent to you, that he has, with the consent

Be it transmitted to the lieutenant governor, with the information

that the statement (opposite to this) is true, and that the petitioner deserves the favor which he solicits.

JAMES MACKAY.

ST. ANDREW, *the* 21*st Jan.*, 1800.

of your predecessor, come over to this shore, where he has selected a tract of land of the domain of his majesty, (on the) south bank of the Missouri; which being considered, he supplicates you to have the goodness to grant to him, at the same place, for the support of his family, the quantity of three hundred and fifty arpents of land in superficies. The petitioner having the means necessary to improve a farm, and having no other view but to live as a submissive and peaceable cultivator (of the soil,) hopes to obtain the favor which he solicits.

his

MORDECAI ⋈ BELL.

mark.

ST. ANDREW, 21*st January*, 1800.

ST. LOUIS, 8*th of January*, 1846.

I have translated the above, from the original document in the French language, to the best of my abilities.

ADOLPHE RENARD.

The defendant also gave in evidence a deed from Anthony and William Stoddard, two of the plaintiffs, to Henry G. Cotton, dated September 10, 1840, conveying to said Cotton all their right, title, and interest in the lands in controversy; also, a deed from said Cotton and wife to George E. Walker, conveying to him the same interest. He also gave in evidence sundry mesne conveyances, whereby the title under the location of the Peltier claim, to the portion thereof in controversy in this suit, was derived from said Kinchaloe, the locator of the claim, down to the defendant, through William Stokes, who first took possession under the Peltier title.

Testimony of John Finney.

John Finney, a witness for defendant, testified, that he knew the 40 acres in dispute in this action, and has known the land since 1818 or 1820; that a portion of the Peltier location was in cultivation in 1820, and perhaps before; some of it was ploughed in the spring of 1820, by William Stokes, who continued thereon till his death; one Wheeler then occupied awhile as tenant, and was succeeded by Alexander McAllister, who claimed title and occupied the part just west of Mills' 40 acres; that a portion of said 40 acres was put in cultivation by Stokes; that George Collier succeeded McAllister in possession, and Gamble went into possession while Collier was there; that Stokes took possession in 1819, dug a well, and commenced building, and that possession has ever since continued under that title.

Testimony of Beaumont.

Dr. Beaumont testified for defendant, that since 1840 he had occupied 20 acres of the land bought by Mills of Gamble, comprehending the buildings; that witness bought it of Mills, and that it would now rent for five hundred dollars per annum.

Testimony of P. L. Cerre.

Pascal L. Cerre, a witness for defendant, testified that he came to St. Louis very young from Canada, in the year 1777, returned to Canada, and came back to St. Louis in 1779, and remained there till 1781; that he then went to Canada, and staid there till 1787, when he came to St. Louis, where he remained till 1791, when he again visited Canada and staid there till 1794, when he came to St. Louis, where he has remained ever since; that he was well acquainted with Mordecai Bell and his family, his father, mother, brothers, &c., and knew him when he first came to the Spanish country; that said Mordecai Bell resided at Wild Horse creek, a few miles south of the post of St. Andre, where James Mackay was commandant in Spanish times; it was about two or two and a half miles south of that post where Mordecai Bell lived, and was about forty miles west southwest of St. Louis; that Mordecai Bell never resided at any time nearer St. Louis than that place, nor did any other of the Bells; that Mordecai Bell lived at that place several years, and then went away; that said Bell was principally employed in hunting, drinking, and playing cards; he led a vagabond sort of a life; that he, Cerre, lived all the time at St. Louis, while Mordecai Bell was at Wild Horse creek; that he, witness, knew the land occupied by Stokes; and that there was no improvement or cultivation there under Spanish government, nor until Stokes cultivated it was there any cultivation; said witness examined said original petition of Mordecai Bell given in evidence by plaintiffs, and stated that he knew the handwriting of James Mackay well, and that it was with the signature, except the mark, all in Mackay's handwriting; that he did not know why Stoddard's mound was so called, but supposes it was because he purchased the land on which it was, and did not know when it was first so called, whether at Stoddard's death; he thinks it was before his death.

The defendant then offered in evidence the deposition of Mordecai Bell, which was objected to by the plaintiff's counsel; 1st, because of irrelevancy; 2d, if not irrelevant, that it went to impeach a title conveyed by the witness; which objection was overruled, and the deposition read, which is as follows:

M. Bell's deposition.

Deposition of Mordecai Bell, produced, sworn, and examined at the house of said Bell, at Moreau township, in the county of Morgan, and State of Missouri, before me, John Chism, judge of the county court for the county of Morgan aforesaid, in a certain cause now pending in the circuit court of the United States, for the district of Missouri, between Simeon Stoddard, Curtis Stoddard, Daniel Stoddard, Anthony Stoddard, William Stoddard, Joseph Bunnell and Lucy Bunnell, Jonas Foster and Lavina Foster, Lucy Hoxie, Daniel Morgan, and Aroa Morgan, plaintiffs, and Adam L. Mills, defendant, on the part of the defendant.

Mordecai Bell, of lawful age, being produced, sworn, and examined

on the part of the defendant, deposeth and sayeth, that he resides in Moreau township, in the county of Morgan, and State of Missouri; that he was first married on the 8th day of March, in the year eighteen hundred and two, and that parts of the three winters preceding his marriage, he was hunting in the upper parts of this State; that neither in the year eighteen hundred, or any year after, did he petition the Spanish governor Delassus for any grant of land. That a few years after he was married Santiago Mackay repeatedly asked deponent to petition the Spanish governor for a grant of land; that some two or three years after deponent was married, Mackay told him that he, deponent, had a head right, and that he, Mackay, wished to change a tract of land for his head right, which he, deponent did; that he never petitioned the Spanish governor for any grant of land in or in the neighborhood of the town of St. Louis, nor was there any granted him to the best of his knowledge; that he resided in the counties of St. Louis and Franklin till the year 1819.

his
MORDECAI ⊐ BELL.
mark.

I, John Chism, judge of the county court for the county of Morgan, and State of Missouri, not being of counsel or attorney to either of the parties aforesaid, or interested in the event of the cause aforesaid, do hereby certify, that the deponent, Mordecai Bell, whose place of residence is in Moreau township, in the county of Morgan, and State of Missouri, was by me carefully examined, and cautioned, and sworn to testify the whole truth of his knowledge touching the matters in controversy in the cause aforesaid; that the said deponent was examined in my presence, and his examination being reduced to writing by me, and subscribed by said deponent in my presence by making his mark, not being able to write, on the twenty-third day of March, in the year eighteen hundred and forty-two, at the house of said Mordecai Bell, at Moreau township, in the county of Morgan, and State of Missouri, and the said deposition is herewith returned. The reason for taking the deposition of said witness is, that he resides more than one hundred miles from the city of St. Louis, in Missouri, where the circuit court of the United States for the Missouri district is held. No notification has been given to either of the said plaintiffs or their attorney, neither being within one hundred miles of the said Moreau township.

Given at Moreau township, county of Morgan, and State of Missouri, this 23d day of March, 1842.

JOHN CHISM,
Judge of the county court of Morgan county.

Testimony of Adolphe Renard.

Adolphe Renard, for defendant, testified that he is a Frenchman, and the French language is his mother tongue; that he has been in the recorder of land titles office since April, 1837, and more or less in habit of handling papers there, making copies and translations, and that the

translation of the said original petition of Mordecai Bell—which translation is given in evidence by defendant—is a correct and faithful translation; that the letters "*M. R. S.*" in said petition he considers as put for "*Majeste Rive Sud;* that he, witness, knows nothing of the Spanish laws; that Julius De Mun was a good translator, and understood both French and English. He further stated that he never saw a concession where a commandant of a post recommended a grant of land lying close to St. Louis, the residence of the lieutenant governor.

Testimony of W. Milburn.

William Milburne, for defendant, testified that he had been in the surveyor's office from 1816 to 1841, a part of the time as clerk, and the latter part of the time as surveyor general. He examined the said petition of Mordecai Bell, as translated by Renard, and the concession, and stated that he, as surveyor, should survey said concession on the south bank of the Missouri river, if not otherwise directed; that the post of St. Andre was in what is called Bonhomme bottom, some 30 miles from St. Louis; that St. Andre was close on the river, and its site has been partially or wholly washed away by the river.

Rebutting evidence.

The plaintiffs, by way of rebutting testimony, gave in evidence the following letter of the Secretary of the Treasury of the United States, produced by Thomas Watson, register of the land office at St. Louis, from the files of his office, dated 10th June, 1818.

Letter of Secretary of the Treasury to the Commissioner of Land Office.

TREASURY DEPARTMENT, *10th June*, 1818.

SIR: You are requested to instruct the recorder of land titles in the Missouri territory to furnish to the receiver and register of the land district of St. Louis a descriptive list of the land claims which have been presented and registered under the different acts of Congress for confirming the rights of individuals to lands which have not been confirmed, and that are situate within the said land district, with as little delay as practicable; also, a list of the same kind to the receiver and register of the district of Howard county, of all the land claims within said district which in like manner have not been confirmed. For this service he will be entitled to a reasonable compensation. "You are also requested [to] direct the register and receiver of those districts, respectively, to withhold from sale all such lands, until otherwise directed." It may be proper, however, to advise those officers that this act is not to be considered as in any manner countenancing the idea that such claims are considered equitable, or that their being withheld from sale at this time ought to excite an expectation that they will ultimately receive the sanction of Congress. They are withheld from sale because the land claims have been, during the latter end of the late session of Congress, referred to the Secretary of the Treasury, with directions to report to the

next session. The receiver and register should be instructed to make the subject of these observations known, for the purpose of preventing speculation on those land claims.

I have the honor to be, your most ob't serv't,

(Signed) WM. H. CRAWFORD.

JOSIAH MEIGS, esq., *C. G. L. O.*

LAND OFFICE, ST. LOUIS, MISSOURI,
Register's Office, Sept. 20th, 1845.

I certify that the foregoing is a true transcript of a copy of a letter from William H. Crawford, while Secretary of the Treasury of the United States, dated 10th June, 1818, to Josiah Meigs, then Commissioner of the General Land Office; and which said copy is on file in this office.

THOMAS WATSON, *Register*.

The plaintiffs also gave in evidence a list, purporting to have been made out by Frederick Bates, formerly recorder of land titles, and to be a list of the land claims not finally acted on by Congress; which list was produced by said Watson, register, as aforesaid, from the files in his office; of which list the following is an extract. (The list here referred to was not filed with the bill of exceptions. J. G., *Cl'k.*)

Proclamation of the President.

The plaintiffs likewise read in evidence the proclamation of the President of the United States, dated June, 1823, and published in the summer and fall of 1823, for the sale of the public lands, on the third Monday of November in that year, at St. Louis, which were situate in the township and range in which the land sued for in this action is situate.

Testimony of W. Milburn.

The plaintiffs also gave in evidence, by consent, the testimony given by William Milburne, in another suit, respecting a part of said Peltier claim, in the words and figures following: It was proved by William Milburn, a witness for them, that he had been employed in the surveyor's office, either as clerk or as surveyor general, ever since some time in the year 1817; that the land claimed by plaintiffs, under Bell, lies in township forty-five north, and range seven east; that said township was surveyed during the years 1817, 1818, and 1819, and said surveys were returned to the office and examined in 1822; that the public lands were not surveyed when Peltier's location was made. There was a list made out in 1818, by the recorder, of lands reserved from sale, but no copy of that list was sent to the surveyor's office; the claim of Mordecai Bell was in the list; that same was not laid down on the plat sent to the register and receiver as reserved; that a great portion of the locations under New Madrid certificates, so called, were made before the country was surveyed; and that, in all such cases, the surveys of such locations did not correspond with the subsequent surveys of the public lands. The survey of Eustache Peltier's claim was made by Joseph C. Brown,

under the same contract by which he surveyed the sectional lines of the same township; that the lines of the Peltier tract, on two sides, are the boundaries of old confirmed titles. He further testified that the custom of the surveyor was to furnish the plat and survey to the recorder of land titles, addressed to him, which was the notice required by law; that the return to the surveyor general of the Peltier survey was at the same time with that of all the adjacent surveys.

Deed from M. Bell to Christina Ridenhour.

The plaintiffs also gave in evidence a deed from Mordecai Bell to Reinhart, which is as follows:

Know all men by these presents, that I, Mordecai Bell, of the district of St. Louis, and *Hana*, my wife, for and in consideration of the sum of one hundred and fifty dollars, in property at peltry price, to me in hand paid by Christina Ridenhour, of St. Andrew, the receipt whereof I do hereby acknowledge, and thereof, and of every part thereof, do hereby acquit and discharge *him*, the said Christina Ridenhour, her heirs, executors, and administrators, by these presents, have granted, bargained, and sold, and do, by these presents, grant, bargain, and sell, unto the said Christina Ridenhour, her heirs and assigns, forever, one certain piece of land, containing one hundred and fifty arpens, French superficial measure, situated on the Wild Horse creek, which piece of land is a part of James Mackay's survey, and is joining the south line of the said Christina's plantation. To have and to hold the said granted and bargained premises, with all its appurtenances and advantages, unto her, the said Christina Ridenhour, her heirs and assigns, forever. And I, the said Mordeca Bell, for myself, my heirs, executors, and administrators, do hereby covenant and engage, to and with the said *Cris*tina Ridenhour, that I have a right to sell and dispose of the same in manner and form aforesaid, as having acquired the same of James Mackay, of this district. And I, the said Mordecai Bell, for myself, my heirs, executors, and administrators, do covenant to warrant and defend the said granted and bargained premises to the said Christina Ridenhour, her heirs and assigns, forever, against all the claims and demands of myself, my heirs, executors, and administrators, and assigns, lawfully claiming the same; but it is understood and agreed by the said Christina Ridenhour, that, in case the above said premises should be lost or taken from her, or her heirs and assigns, by the claims or demands of any other person or persons than those already mentioned above, she, the said Christina Ridenhour, nor her heirs nor assigns, nor any person for them, can never claim or demand on or against *he*, the said Mordecai Bell, or any of my heirs or successors, or have any recourse on us for the said loss of the said premises as above stated.

In testimony whereof I, the said Mordecai Bell, and my said wife, have hereunto set our hands and seals, at St. Andrew, Louisiana Territory, this twenty-seventh day of September, year of our Lord eighteen hundred and six.

MORDECAI BELL, his ⋊ mark, [SEAL.]
HANNAH BELL, her ⋊ mark. [SEAL.]

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Signed, sealed, and delivered, in the presence of—
SAMUEL GRAHAM,
ALEXANDER GRAHAM.

LOUISIANA TERRITORY, *St. Louis district:*

Before *the me*, James Mackay, a judge of the court of common pleas and quarter sessions for said district, appeared personally the above named Mordecai Bell and Hannah Bell, and acknowledged the foregoing deed of conveyance to *these* own free and voluntary act and deed, hands and seals, for the purposes therein mentioned, and desires that the same be recorded.

Witness my hand and seal, at St. Andrew, this seventh day of March, year of our Lord eighteen hundred and seven.

JAMES MACKAY. [L. S.]

Recorded this twenty-eighth day of March, year of our Lord one thousand eight hundred and seven.

M. P. LEDUC, *Recorder*.

STATE OF MISSOURI, *county of St. Louis, ss:*

I, the undersigned, clerk of the county court, and ex officio recorder in and for said county, do hereby certify, that the foregoing is a true copy of an instrument of writing, (Mordecai Bell and wife to Christina Ridenhour,) as same remains of record in my office in book A, page 407, and following.

In testimony whereof I have hereunto set my hand, and affixed the seal of said court, at office in Saint Louis, this 31st day of [L. S.] March, 1845.

S. D. BARLOW, *Recorder*.

It was admitted by the parties that the property sued for in this action is worth more than ten thousand dollars. The plaintiffs admitted that they claimed in this action four undivided fifths of the land described in the declaration, and that the other undivided fifth had been conveyed to Hamilton R. Gamble in fee; and both plaintiffs and defendant admitted that the whole of the land sued for is embraced within the patent to Peltier.

There was no other evidence on either side, and thereupon the defendant, by his counsel, asked the court to give the following instructions to the jury, viz:

Instructions prayed by defendant from No. 1 *to* 9, *and refused.*

1. That the survey in 1806, made by Mackay, which has been given in evidence, was made without authority of law, and is not evidence of the proper location of the order of survey made by the lieutenant governor.

2. That if the jury find, from the evidence, that the order of survey made by the lieutenant governor in favor of Mordecai Bell, would not embrace any part of the land in dispute, if surveyed according to its

terms, then the land in dispute was never reserved from sale, and the patent to Eustache Peltier, or his legal representatives, passed the title to the land described in such patent.

3. The reservation by the act of Congress of 1811, in favor of those claiming under Mordecai Bell, if any such reservation existed, was of the land granted to said Bell, and not of the land surveyed by Mackay.

4. If the jury find, from the evidence, that the land sued for in this action is not a part of the tract of land conveyed by Mordecai Bell to James Mackay, in the deed of said Bell given in evidence, they will find for the defendant.

5. Unless the jury find, from the evidence, that Mordecai Bell, or some person claiming under him, filed with the recorder of land titles a notice in writing stating the nature and extent of his claim, and that such notice embraced the land now in dispute, and was filed with the recorder on the first day of July, 1808, or prior thereto, then the land in dispute was not reserved from sale, and the patent to Eustache Peltier, or his legal representatives, conveyed the title to the land described in such patent.

6. That the instructions of the Secretary of the Treasury, read in evidence in this case, and the list of the recorder of land titles of the unconfirmed lands, do not affect any reservation of said land in dispute from sale against the title under the Peltier claim, as distinct from the reservation, if any there be by act of Congress of March, 1811.

7. That there can be no recovery in this action unless for land which was granted to Mordecai Bell.

8. If the jury find, from the evidence, that the New Madrid certificate, so called, in favor of Peltier, was located, embracing the land in controversy in this suit, and that in the year eighteen hundred and twenty-seven a patent certificate was issued by the recorder of land titles on such location, they will find for the defendant.

9. That no title to the land in question passed by the deed given in evidence of Mordecai Bell to James Mackay.

Which instructions, except the sixth, the court refused to give, and each of them; to which refusal the defendant, by his counsel, excepted. The court, then, of its own motion, gave the following instruction:

Instruction given by the court.

The court rejected the instructions presented on part of the defendant, numbered from one to nine, except the sixth, which was given, and instructed the jury: That the land included in the survey given in evidence, made for Amos Stoddard on the 21st of January, 1806, by James Mackay, No. 42, was reserved from location and sale at the time Peltier's location was made, and also at the time his patent issued; and therefore both the location and patent are invalid as against the title of Amos Stoddard, or those claiming through him, to the extent that the two claims cover the same land. And that the land included in Mackay's survey aforesaid is the land confirmed to Amos Stoddard, or to his

heirs, by the act of Congress of July 4th, 1836; and that the confirmation operated as a grant to said Stoddard, or, if he was dead, to his heirs; such being the legal effect of the acts of Congress, records, and title deeds given in evidence, nor does the evidence of the witnesses introduced in anywise impair the effect of the acts of Congress and title papers; to the giving of which last mentioned instruction the defendant, by his counsel, excepted. The defendant then asked the following instructions:

Instructions prayed by defendant and refused by the court.

10. That there is no evidence before the jury that Mordecai Bell, or any person claiming under him, filed with the recorder of land titles such notice of claim according to law as was required in order that the land in question should be considered as reserved from sale.

11. That the plaintiffs are not entitled to recover in this action for any land embraced within the patent to Eustache Peltier, or his legal representatives, which has been given in evidence.

12. That there is no sufficient evidence that notice of the claim of Stoddard, under Mordecai Bell, was filed with the recorder of land titles on or before the first day of July, 1808, according to law.

13. If the jury find, from the evidence, that two of the plaintiffs, Anthony Stoddard and William Stoddard, conveyed their interest in the land in question to Henry G. Cotton since this action was brought, then the plaintiffs in this action are not entitled to recover any thing but damages down to the time of such conveyance, and the plaintiffs cannot recover damages for any time prior to the 4th day of July, 1836; and the jury are instructed to find specially the fact of such conveyance by said Anthony and William Stoddard, and its date; which the court refused to give, to which refusal the defendant, by his counsel, excepted.

The defendant then asked the following instruction, which the court gave, viz:

14. That the plaintiffs cannot recover damages for possession of the premises for any time prior to the 4th of July, 1836.

And the said defendant prays the court to sign and seal this his bill of exceptions, which is done accordingly.

J. CATRON, [SEAL.]
R. W. WELLS. [SEAL.]

And afterwards, on the twenty-first day of April, in the year one thousand eight hundred and forty-six, the said defendant filed his bond, with George Collier and Andrew Christy, sureties, in the words and figures following, to wit:

Bond of A. L. Mills.

Know all men by these presents, that Adam L. Mills, as principal, and George Collier and Andrew Christy, as securities, are held and firmly bound unto Simeon Stoddard, Daniel Stoddard, Joseph Bunnell, Lucy Bunnell, Jonas Foster, Lavinia Foster, Lucy Hoxie, Daniel

Morgan, Aroa Morgan, in the just and full sum of seventeen hundred dollars; for the payment of which, well and truly to be made, they bind themselves, their heirs, &c., by these presents. Sealed with their seals, and dated this 21st day of April, 1846. The condition of the above obligation is such, that whereas the said Adam L. Mills has sued out a writ of error, returnable to the next term of the Supreme Court of the United States, and directed to the circuit court of the United States for the district of Missouri, in order to reverse a judgment rendered by said circuit court at the present April term of said circuit court, in a certain action of ejectment in which the said Simeon Stoddard, Daniel Stoddard, Joseph Bunnell, Lucy Bunnell, Jonas Foster, Lavinia Foster, Lucy Hoxie, Daniel Morgan, and Aroa Morgan, are plaintiffs, and the said Adam L. Mills is defendant.

Now, the condition of the above obligation is such, that if the said Adam L. Mills shall prosecute his writ of error to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void, else to remain in full force and virtue.

A. L. MILLS, [SEAL.]
GEO. COLLIER, [SEAL.]
A. CHRISTY. [SEAL.]

On which said bond is the following endorsement:

Approved, April 28th, 1846.

J. CATRON,
Asso. Jus. S. C. U. S.

MISSOURI DISTRICT, *sct:*

[L. S.] The President of the United States to the honorable the judges of the circuit court of the United States for the district of Missouri, greeting:

Because in the record and proceedings, and also in the rendition of a judgment of a plea in said circuit court, between Simeon Stoddard, Daniel Stoddard, Joseph Bunnell and Lucy his wife, Jonas Foster and Lavinia his wife, Lucy Hoxie, Daniel Morgan and Aroa his wife, demandants, and Adam L. Mills, defendant, a manifest error hath happened, to the great damage of said defendant, as by his complaint appears; we being willing that error, if any, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, you distinctly and openly send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, so that you have the same, together with this writ, before the chief justice and associate justices of said Supreme Court on the first Monday of December next, at the city of Washington, the present seat of the National Government, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness, the honorable Roger B. Taney, chief justice of the said Supreme Court, the twentieth day of April, in the year of our Lord one thousand eight hundred and forty-six.

Issued at office in the city of St. Louis, under the seal of the circuit court of the United States for the district of Missouri, the day and year last aforesaid.

JOSEPH GAMBLE,
Clerk U. S. C. C. Missouri district.

MISSOURI DISTRICT, *ss:*

In obedience to the foregoing writ of error, I herewith transmit to the Supreme Court of the United States, a duly certified transcript of the record and proceedings of the circuit court of the United States for the district of Missouri, in the plea in said writ mentioned.

JO. GAMBLE,
Clerk U. S. C. C. Mo. dist.

MISSOURI DISTRICT, *sct:*

The President of the United States, to Simeon Stoddard, Daniel Stoddard, Joseph Bunnell and Lucy his wife, Jonas Foster and Lavinia his wife, Lucy Hoxie, Daniel Morgan and Aroa his wife, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington city, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of Missouri, wherein Adam L. Mills is plaintiff in error, and you, Simeon Stoddard, Daniel Stoddard, Joseph Bunnell, Lucy Bunnell, Jonas Foster, Lavinia Foster, Lucy Hoxie, Daniel Morgan, and Aroa Morgan, are defendants in error, to shew cause, if any there be, why judgment rendered against the said Adam L. Mills, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the honorable John Catron, one of the justices of the Supreme Court of the United States, the twenty-first day of April, in the year of our Lord one thousand eight hundred and forty-six.

J. CATRON, *Ass. Jus. S. C. U. S.*

I acknowledge service of above citation on defendants in error.

L. E. LAWLESS,
Att'y for defts. in error.

August 8th 1846.

MISSOURI DISTRICT, *ss:*

I, Joseph Gamble, clerk of the circuit court of the United States for the district of Missouri, certify that the foregoing, from page one to page forty-one, inclusive, is a full and true transcript of the record and proceedings of said court, in a certain matter of controversy therein determined between Simeon Stoddard and others, heirs of Amos Stoddard, deceased, plaintiffs, and Adam L. Mills, defendant, as the same now is of record and on file in my office.